

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

THE STATE OF CALIFORNIA,

Plaintiff, Case No. CV12-5874-EJD-PSG

V.

[PROPOSED] FINAL JUDGMENT

EBAY INC.,

Defendant.

WHEREAS, the People of the State of California filed its Third Amended Complaint (“Complaint”) on April 30, 2014, alleging that eBay Inc. (“eBay”) participated in an agreement in violation of Section One of the Sherman Act, the Cartwright Act, and California’s Unfair Competition Law, and the State of California and the Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any additional issues of fact or law;

AND WHEREAS this Final Judgment does not constitute any admission by the Defendant that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true:

AND WHEREAS, the Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by this Court;

NOW THEREFORE, before any testimony is taken, without trial, and upon consent of the Defendant, it is ORDERED, ADJUDGED, AND DECREED.

I. JURISDICTION

This Court has jurisdiction over the subject matter and both of the parties to this action. The Complaint states a claim upon which relief may be granted against eBay under Section One of the Sherman Act, as amended, 15 U.S.C. § 1. This Court also has supplemental jurisdiction over the Complaint's Cartwright Act, Cal. Bus. & Prof. Code § 16720, *et seq.*, and Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, claims.

II. DEFINITIONS

As used in this Final Judgment:

A. “eBay” or “Defendant” means eBay Inc., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

B. "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. "Effective Date" shall have the same meaning as in the Settlement Agreement.

D. “No direct solicitation provision” means any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person.

E. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

D. “Releasing Parties” means the State of California, the Attorney General, and the Attorney General acting as *parens patriae* on behalf of all natural persons who resided in California at any point from January 1, 2005 through the Effective Date and who did not opt out of the settlement during the Response Period.

F. “Released Claims” means all claims, demands, rights, liabilities, and causes of action, that were or could have been asserted against eBay in connection with the facts, transactions, or events alleged in the Complaint.

G. "Senior manager" means any company officer or employee above the level of vice president.

III. APPLICABILITY

This Final Judgment applies to eBay, as defined in Section II, and to all other persons in active concert or participation with eBay who receive actual notice of this Final Judgment by personal service or otherwise. It is entered into jointly with the Settlement Agreement between the parties.

IV. PROHIBITED CONDUCT

eBay is enjoined from attempting to enter into, entering into, maintaining or enforcing any agreement with any other person to in any way refrain from, requesting that any person in any way refrain from, or pressuring any person in any way to refrain from soliciting, cold calling, recruiting, or otherwise competing for employees of the other person.

V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit eBay from unilaterally attempting to enter into, entering into, maintaining, or enforcing a no direct solicitation provision that is otherwise not prohibited by federal and state statutory and case law.

B. eBay shall not be required to modify or conform, but shall not enforce, any no direct solicitation provision to the extent it violates this Final Judgment if the no direct solicitation provision appears in eBay's consulting or services agreements in effect as of the date of this Final Judgment (or in effect as of the time Intuit acquires a company that is a party to such an agreement).

VI. REQUIRED CONDUCT

A. eBay shall:

1. furnish a copy of this Final Judgment within sixty days of entry of the Final Judgment to each of its officers, directors, human resources managers, and senior managers who supervise employee recruiting, solicitation, or hiring efforts;

1 2. furnish a copy of this Final Judgment to any person who succeeds to a position
2 described in Section VI.A.1 within thirty days of that succession;

3 3. annually brief each person designated in Sections VI.A.1 and VI.A.2 on the
4 meaning and requirements of this Final Judgment and the antitrust laws; and

5 4. obtain from each person designated in Sections VI.A.1 and VI.A.2, within 60
6 days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and,
7 to the best of his or her ability, understands and agrees to abide by the terms of this Final
8 Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to
9 eBay; and (iii) understands that any person's failure to comply with this Final Judgment may
10 result in an enforcement action for civil or criminal contempt of court against Intuit and/or any
11 person who violates this Final Judgment.

12 B. For five (5) years after the date of entry of the Final Judgment on or before its
13 anniversary date, eBay shall file with the State of California an annual statement identifying and
14 providing copies of any agreement and any modifications thereto covered by Section V.A.5. of
15 the Final Judgment in *United States v. Adobe Systems, et al.* as well as describing any violation or
16 potential violation of this Final Judgment known to any officer, director, human resources
17 manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts.
18 Descriptions of violations or potential violations of this Final Judgment shall include, to the
19 extent practicable, a description of any communications constituting the violation or potential
20 violation, including the date and place of the communication, the persons involved, and the
21 subject matter of the communication.

22 C. If any officer, director, human resources manager, or senior manager who supervises
23 employee recruiting, solicitation, or hiring efforts of eBay learns of any violation or potential
24 violation of any of the terms and conditions contained in this Final Judgment, eBay shall
25 promptly take appropriate action to terminate or modify the activity so as to comply with this
26 Final Judgment and maintain all documents related to any violation or potential violation of this
27 Final Judgment.

VII. ENFORCEMENT

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, from time to time authorized representatives of the California Department of Justice, including consultants and other persons retained by the State of California, shall, upon the written request of an authorized representative of the Chief Assistant Attorney General in charge of the Public Rights Division, and on reasonable notice to eBay, subject to any legally recognized privilege, be permitted:

1. access during eBay's regular office hours to inspect and copy, or at the option of the State of California, to require eBay to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in this Final Judgment, including, but not limited to, all documents identified, provided, maintained, or created pursuant to any related cases; and

2. to interview, either informally or on the record, eBay's officers, employees, or agents, who may have their counsel, including any individual counsel, present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by eBay.

B. Upon the written request of an authorized representative of the Chief Assistant Attorney General in charge of the Public Rights Division, eBay shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the State of California to any person other than an authorized representative of the State of California, except in the course of legal proceedings to which the State of California is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by eBay to the State of California, eBay represents and identifies in writing the material in any such information or

1 documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal
2 Rules of Civil Procedure or Section 2025.420(b)(13) of the California Code of Civil Procedure,
3 and eBay marks each pertinent page of such material, "Subject to claim of protection under Rule
4 26(c)(1)(G) of the Federal Rules of Civil Procedure or Section 2025.420(b)(13) of the California
5 Code of Civil Procedure," then the State of California shall give eBay ten (10) calendar days
6 notice prior to divulging such material in any legal proceeding (other than a grand jury
7 proceeding).

8 **VIII. RETENTION OF JURISDICTION**

9 A. This Court retains jurisdiction to enable any party to this Final Judgment to apply to
10 this Court at any time for further orders and directions as may be necessary or appropriate to carry
11 out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to
12 punish violations of its provisions.

13 B. In the event that the provisions of the Settlement Agreement or this Final Judgment
14 are asserted by eBay as a defense in whole or in part to any claim or cause of action or otherwise
15 raised as an objection in any other suit, action or proceeding by a plaintiff, the Attorney General
16 shall not object to a motion by eBay for a stay of that suit, action or proceeding until this Court
17 has entered an order or judgment determining any issues relating to the defense or objection based
18 on such provisions.

19 **IX. EXPIRATION OF FINAL JUDGMENT**

20 Unless this court grants an extension, this Final Judgment shall expire five (5) years from
21 the date of the entry of the Final Judgment.

22 **X. NOTICE**

23 For purposes of this Final Judgment, any notice or other communication shall be given to
24 the persons at the addresses set forth below (or such other addresses as they may specify in
25 writing to eBay):

26 Senior Assistant Attorney General
27 Antitrust Section, Public Rights Division
28 Office of the Attorney General of California
455 Golden Gate Avenue, Suite 11000

1 San Francisco, CA 94102

2 **XI. SETTLEMENT PAYMENT**

3 The Court approves the Settlement Agreement between the Settling Parties, including but
4 not limited to Sections V (“Payment of Settlement Funds”), VI (“Plan of Allocation of Settlement
5 Funds”), and VII (“Notice and Opt-Out Procedures”). The Settling Parties are to proceed as
6 outlined in those Sections of the Settlement Agreement.

7 **XII. RELEASED CLAIMS**

8 A. The State of California, the Attorney General, and the Attorney General acting on
9 behalf of the people of California as *parens patriae* on behalf of all natural persons who currently
10 reside in California as of the Effective Date or who resided in California at any point from
11 January 1, 2005 through the Effective Date and who did not timely file with the Court a valid
12 request for exclusion from the settlement fully, finally, and forever releases eBay from all
13 Released Claims.

14 B. This Final Judgment shall be deemed *res judicata* as to any Released Claim.

15 C. To the fullest extent permitted by law, the Office of the Attorney General waives
16 any right or benefit available to it under Section of the California Civil Code, which provides as
17 follows: “A general release does not extend to claims which the creditor does not know or
18 suspect to exist in his favor at the time of executing the release, which if known by him must have
19 materially affected his settlement with the debtor” and all provisions, rights and benefits
20 conferred by any law of any state or territory of the United States, or principle of common law or
21 foreign law, that is similar, comparable or equivalent in effect to Section 1542 of the California
22 Civil Code.

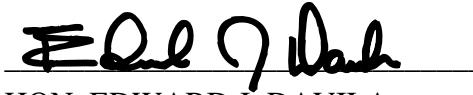
23 **XII. ATTORNEY'S FEES AND COSTS**

24 A. Plaintiff is awarded its attorneys' fees and costs in the amount of \$675,000, which
25 amount shall be recovered from the settlement payment described in Section XI, above. eBay
26 shall pay this sum as outlined in the Settlement Agreement within 30 business days following the
27 date of entry of this Final Judgment.

1 B. If Plaintiff successfully brings an action to enforce the provisions of this Final
2 Judgment, eBay shall reimburse Plaintiff for all reasonable costs and attorneys' fees associated
3 with bringing such enforcement action.

4 The Clerk shall close this file.

5 Date: 9/11/2015

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7 HON. EDWARD J. DAVILA
8 United States District Judge

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CERTIFICATE OF SERVICE

Case Name: People v. E-Bay, Inc. No. 5:12-cv-05874-PSG

I hereby certify that on September 10, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

[PROPOSED] FINAL JUDGMENT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 10, 2015, at San Francisco, California.

Michelle CoSeng
Declarant

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Signature